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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,000	04/14/2004	Ken Motooka	MIZ72	5955
6980	7590	03/09/2006	EXAMINER	
TROUTMAN SANDERS LLP			HANEY, RICHALE LEE	
600 PEACHTREE STREET, NE			ART UNIT	PAPER NUMBER
ATLANTA, GA 30308			3765	

DATE MAILED: 03/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/824,000

Applicant(s)

MOTOOKA ET AL.

Examiner

Richale L. Haney

Art Unit

3765

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 14 April 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-6 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 14 April 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4/14/2004.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Claim Objections***

1. Claim 6 is objected to because of the following informalities: the phrase "tube-like" is vague and does not clearly define the metes and bounds of the claim.

Appropriate correction is required.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claim 3 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 3 recites the limitation "the" in reference to a outer and inner surface of said thumb stall. There is insufficient antecedent basis for this limitation in the claim.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-6 are rejected under 35 U.S.C. 102(b) as anticipated by or, in the alternative, under 35 U.S.C. 103(a) as obvious over Fous (US 6,289,515).

The device of Fous discloses a baseball catching tool having an outer member formed by palm and back portions (Figs. 1 and 2) having an inner mitten member inserted into the outer member, by definition a mitten has a palm side and a back side which are joined together. The mitten alternatively may be comprised of five individual finger stalls for receiving each of the wearer's fingers (see col. 2, lines 34-37). The inner member has a tube-like elastic member (19) fixed to the back member (fig. 1, at 18 & 19 tied to outer member) partially forming and covering the thumb stall, extending along the back member from one end of the thumb stall to the other end in a width direction for fixing the thumb of the wearer to the thumb stall. Additionally, the inner member has an elastic member (18) fixed to the little fingerstall for receiving the little finger. It is noted that elastic is defined by Merriam Webster dictionary as "capable of ready change." The fixing member comprises ties for the adjustment of the elastic element within the inner member making the thumb of the user easily bendable. The construction of the entire baseball-catching tool is not disclosed by Fous; however, it is inherent that the materials used are leather. In the alternative it would have been obvious to one of ordinary skill in the art to employ leather for the construction of the tool since it is well known in the art to use such materials (see Murai US 2001/0025382 as an example).

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1 – 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gous in view of Murai. The device of Gous discloses a baseball catching tool having an outer member formed by palm and back hand portions (Figure 1 and Figure 2) having an inner mitten member inserted into the outer member, by definition a mitten has a palm side and a back side which are stitched together, the mitten alternatively may be comprised of five individual finger stalls for receiving each of the wearer's fingers (Column 2, lines 34 –37). The inner member has a tube-like elastic member (19) fixed (See figure 1, where 18 and 19 are tied to the outer member) to the back member (Figure 1) partially forming and covering the thumb stall, extending along the back member from one end of the thumb stall to the other end of the thumb stall in a width direction for fixing the thumb of the wearer in the thumb stall. Additionally, the inner member has an elastic member (18) fixed to the little fingerstall for receiving the little finger. It is noted that that elastic is defined by Merriam Webster dictionary as "capable of ready change." The fixing member comprises ties allowing for the adjustment of the elastic element within the inner member making the thumb of the user easily bendable. The device of Murai discloses an outer member and inner member both made from leather (Page 2, Paragraph 0029). It would have been obvious to one of ordinary skill in

the art at the time the invention was made to modify the device of Fous by using leather as taught by Murai in order to protect the hand of the wearer.

### ***Conclusion***


6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Miner (US 4,896,376), Richey, Jr. (US 1,964,175), Gilligan (US 6,536,046), Goldsmith (US 5,551,083), Aoki (US 4,665,561), and Golomb (US 4,603,439) show ball-catching tools having thumb-retaining devices.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Richale L. Haney whose telephone number is 571-272-8689. The examiner can normally be reached on M-F 8:00 - 4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on 571 -272-4983. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
JOHN J. CALVERT  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700

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Richale L. Haney  
Patent Examiner  
Art Unit 3765  
March 2, 2006

RLH